

Chapter 107, NOISE -

§ 107-1. Definitions.

As used in this chapter, the following terms shall have the meanings indicated:

AIRCRAFT -- Vehicles or devices that are used to travel in air above the surface of the earth and include any devices attached, suspended or towed. Also included are remote-controlled aircraft.

MOTORBOAT -- Any vessel that operates on water and is propelled by machinery, including but not limited to powerboats, motorboats and personal watercraft (PWC).

MOTOR VEHICLES -- Vehicles self-propelled or drawn by any mechanical equipment which are capable of emitting noise.

NOISE DISTURBANCE -- Any sound which endangers or injures the safety or health of humans or animals, or annoys or disturbs a reasonable person of normal sensitivities, or jeopardizes the value of property and erodes the integrity of the environment.

PASSES OF MOTOR BOATS OR AIRCRAFT IN PROXIMITY TO FENWICK ISLAND, DE (THE TOWN) -- This term means the driving or piloting of such vehicles through, over or outside of the Town or Town-patrolled beach properties, but close enough so that sounds emanating from such vehicles can be heard by people in the town or on its patrolled beaches. A pass can be from one end of the Town to the other end or a portion thereof.

PERSON -- Includes firms, companies, corporations, partnerships, associations or any organization entity as well as individuals.

TOWN-PATROLLED BEACH -- The sandy beach area east of the eastern boundary of private and public property to the ocean water and the portion of ocean normally used by swimmers. (The areas observed and patrolled by Fenwick beach guards, as provided by the State of Delaware.)

§ 107-2. General prohibitions.

The following acts are deemed to be a noise disturbance:

A. Making, creating or permitting any unreasonably loud, disturbing and unnecessary noise or making, creating or permitting any noise of such character, intensity or duration as to be detrimental to the life, health and welfare of any person or which disturbs, injures or endangers the comfort, repose, peace or safety of any individual. By way of example and not in limitation, the following shall be deemed to be unreasonably loud, disturbing and unnecessary noises:

(1) Playing any radio, phonograph, tape deck or musical instrument in such a manner or at such a volume, particularly between the hours of 12:00 a.m. and 8:00 a.m., as to annoy or disturb the quiet, comfort or repose of any person in any other dwelling unit, apartment or commercial lodging room.

(2) The blowing of any horn, whistle or signal device, except as a danger signal, for an unreasonable and unnecessary period of time.

(3) Yelling, shouting or singing at such volume as to be plainly and disturbingly audible to the human ear outside the premises.

§ 107-3. Noise suppression devices.

A. No person shall cause, suffer or allow or permit the removal, disconnection or disabling of any noise suppression device or system which has been installed on any noise source pursuant to any of the following:

- (1) Pursuant to any federal or state law or regulation.
- (2) As a requirement for obtaining a permit to construct, modify or install such noise source.

B. No person shall defeat the designed purpose of any noise suppression system or device by installing any part or component which does not meet the minimum designed specifications for that system or device.

C. This section does not apply to licensed motor vehicles, motorboats or aircraft used exclusively for emergency purposes.

§ 107-4. Noise disturbance levels.

A. Any motorboat or aircraft that makes a pass or passes in proximity to the Town will be in violation of this chapter if any single pass causes a **noise disturbance**.

B. Music or other sounds made by a radio, tape player, CD player or other such electronic device in or on a motor vehicle is a noise disturbance if heard by a person **25 feet** or more from the motor vehicle.

§ 107-5. Fixed external mechanical equipment.

Such equipment will be in violation of this Chapter only when not functioning in accordance with manufacturing specifications and when not in proper working order. Any complaints of the sound emanating from a fixed external mechanical equipment shall be accompanied by documentation supplied by an independent certified source.

§ 107-6. Exceptions.

Exempted from these regulations are:

A. Recreational, sports and musical activities. Noise created by the use of property for the purpose of recreational, sports or musical activities, provided that such exemption is authorized by the Town prior to the activity requested.

B. Emergencies. Noise created as a result of or related to an emergency, including the emission of sound for the purpose of alerting persons to the existence of an emergency and the emission of sound in the performance of emergency work.

C. Public celebrations. Patriotic or public celebrations as authorized by the Town or other government entity empowered to sanction such activity.

D. Productive activities; activities for residential use or for the health, safety and welfare of the community. Unavoidable noises created by activities such as personal home repairs or construction, gardening, grass cutting, power cleaning and aerial pesticide spraying are permitted between the hours of 8:00 a.m. and 8:00 p.m.,

provided that reasonable efforts are made to minimize such noise and the activities do not violate any Town ordinances or State or Federal laws.

E. Special exemptions may be granted by the Town prior to the activity requested.

§ 107-7. Violations and penalties.

A. Any person found guilty of violating any of the provisions of this chapter shall, upon conviction thereof, be subject to a fine of \$200. Each day that a person continues to violate the provisions of this chapter shall be deemed to be a separate offense.

B. In addition to the criminal penalties hereinbefore described, if any person violates any provision of this chapter and/or commits noise disturbance and/or causes or allows noise in prohibited levels to emanate from a source property under his/her ownership or control, the Town may institute an action for injunctive relief against such person to prohibit or prevent such violation.

C. In the case of a single-family residential property subject to a rental license, oral and written notice of each such violation shall be given to the recorded license holder and his/her realtor within five business days. The license may be revoked if there have been three oral and written notices during a calendar year of violation of §77-9 of this chapter. Such license revocation may be immediate, or deferred to the entire rental season for the following year, or both.

D. In addition, The Town Council may institute appropriate proceedings to restrain or enjoin further construction in violation of the chapter and/or proceedings to abate any violation, and to require the removal of the violation. In this event, the Town Council shall be entitled to collect from the offending party or parties, the Town's reasonable attorneys fees, legal costs and expenses and court costs, as a part of any judgment or award in a civil action brought to restrain or enjoin a violation. Civil remedies are in addition to and not in lieu of the penalties provided herein.